

SUBCHAPTER K: DESALINATION, SUBSTANTIVE
§§297.200 - 297.210
Effective December 8, 2016

§297.200. Applicability.

This subchapter only applies to diversion for desalination and use of marine seawater and diversion for desalination of seawater solely for industrial use and conveyance of treated marine seawater in the bed and banks of a watercourse. The requirements for an application to divert marine seawater and seawater and to convey treated marine seawater in the bed and banks of a watercourse are in Chapter 295, Subchapter G of this title (relating to Desalination, Procedural).

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§297.201. Definitions.

The following words or phrases have the following meanings in this subchapter unless the context clearly indicates otherwise:

(1) Marine seawater--Water that is derived from the Gulf of Mexico for desalination.

(2) Seawater--Water that is derived from a bay or arm of the Gulf of Mexico for desalination and use solely for industrial purposes.

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§297.202. Approval Criteria for Diversion of Marine Seawater and Seawater.

The commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if:

(1) the application conforms to the requirements prescribed by §295.302 of this title (relating to Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater) and is accompanied by the prescribed fee;

(2) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or the water contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter, in accordance with the

requirements set out in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration);

(3) the diverted marine seawater or seawater is intended for a beneficial use and the marine seawater or seawater will be treated in accordance with applicable commission rules, based on the purpose for which the marine seawater or seawater is to be used, before it is used;

(4) the application is not detrimental to the public welfare;

(5) the applicant has provided documentation of the results of the consultation with the Texas Parks and Wildlife Department and the Texas General Land Office;

(6) the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan unless the commission determines that new, changed, or unaccounted for conditions warrant waiver of this requirement; and

(7) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by §297.1 of this title (relating to Definitions).

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§297.203. Water Availability.

The commission is not required to make a finding of water availability for an application under Chapter 295, Subchapter G of this title (relating to Desalination, Procedural).

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§297.204. Applicability of Environmental Flow Standards.

(a) The commission shall evaluate whether an application for a diversion of marine seawater or seawater under Chapter 295, Subchapter G of this title (relating to Desalination, Procedural) is consistent with any applicable environmental flow standards established under Chapter 298 of this title (relating to Environmental Flow Standards for Surface Water).

(b) The commission may include any provisions in a permit issued under Chapter 295, Subchapter G of this title that the commission considers necessary to

comply with the environmental flow standards established under Chapter 298 of this title.

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§297.205. Determination of Total Dissolved Solids Concentration.

(a) In its consideration of an application for a new or amended water right to divert marine seawater or seawater, the commission shall review the information required under §295.302(i) of this title (relating to Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater) and determine whether the application meets the requirements of Texas Water Code (TWC), §11.1405(a)(2) and §18.003(a)(2).

(b) The monthly samples must be taken at the water source for each proposed diversion location over a period of at least one year, in accordance with applicable TCEQ Surface Water Quality Monitoring Procedures as amended. Procedures for analysis must be in accordance with the most recently published edition of the *Standard Methods for the Examination of Water and Wastewater*, 40 Code of Federal Regulations Part 136, or other reliable sources acceptable to the commission for total dissolved solids. Laboratory accreditation requirements are specified in Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification).

(c) The assessment of any conditions upon a proposed amendment to a water right under this section shall be limited by §297.45(b) of this title (relating to "No Injury" Rule) as provided by TWC, §11.122(b).

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§297.206. Treatment of Diverted Marine Seawater and Seawater.

The commission shall review the information submitted under §295.302(f) of this title (relating to Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater) and determine whether the diverted marine seawater or seawater will be treated in accordance with applicable commission rules, based on the purpose for which the marine seawater or seawater is to be used.

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§297.207. Diversion of Marine Seawater and Seawater.

The commission shall review the information submitted under §295.302(c) of this title (relating to Requirements for Application for Diversion of Marine Seawater

and Diversion of Seawater) to ensure that the point of diversion is not located in a bay or estuary unless the application is for desalination solely for industrial purposes under Texas Water Code, §11.1405.

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§297.208. Consideration of Water Conservation.

(a) Information in the water conservation plan provided by an applicant for a water right permit to divert marine seawater or seawater shall be considered by the commission in determining whether any practicable alternative exists, whether the requested amount is reasonable and necessary for the proposed use, and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation.

(b) A water conservation plan submitted with an application requesting to divert marine seawater or seawater must include data and information which:

(1) supports the applicant's proposed use of marine seawater or seawater with consideration of the water conservation goals of the water conservation plan;

(2) evaluates conservation as an alternative to the proposed diversion of marine seawater or seawater;

(3) evaluates other feasible alternatives to new water development. It shall be the burden of proof of the applicant to demonstrate that the requested amount is necessary and reasonable for the proposed use; and

(4) demonstrates compliance with applicable provisions, based on the proposed use, in §295.9 of this title (relating to Water Conservation and Drought Contingency Plans).

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§297.209. Impingement and Entrainment.

(a) A person who diverts seawater or marine seawater shall employ reasonable measures to minimize impingement and entrainment.

(b) An application to divert marine seawater or seawater under Chapter 295, Subchapter G of this title (relating to Desalination, Procedural) must include a written statement of the facility-specific, reasonable measures to minimize

impingement and entrainment that will be implemented at the proposed desalination facility.

(c) The written statement under subsection (b) of this section must include:

- (1) the location and depth of the proposed intake;
- (2) the timing of the proposed diversions;
- (3) the physical and performance specifications of the proposed diversion systems and screen barriers, including the size of the screen openings and the maximum flow-through screen velocity; and,
- (4) documentation that the proposed combination of technologies, management practices, and operational methods represent reasonable measures to minimize impingement and entrainment.

(d) A person who diverts seawater or marine seawater to which §295.300(a) of this title (relating to Applicability) does not apply is presumed to be in compliance with subsection (a) of this section if:

- (1) the person submits to the executive director, with a copy to the Texas Parks and Wildlife Department, a written statement of the facility-specific measures that the person intends to implement at the proposed facility to minimize impingement and entrainment;
- (2) the written statement under paragraph (1) of this subsection includes the information and documentation required under subsection (c) of this section;
- (3) within 60 days of the later of the executive director's receipt and Texas Parks and Wildlife Department's receipt of the submittal under paragraph (1) of this subsection, the executive director does not indicate that the submittal is deficient by issuing comments or requesting additional information; and
- (4) the facility implements the measures described in the submittal under this subsection or, if applicable, the amended submittal under subsection (f) of this section.

(e) The executive director may require a person to make a submittal as described in subsection (d) of this section.

(f) If the executive director issues any comment or requests additional information relevant to any submittal under subsection (d) or (e) of this section, the person may amend its submittal up to two times beyond its initial submittal.

(g) The executive director shall review any submittal under subsection (d) or (e) of this section or amended submittal under subsection (f) of this section within 60 days of receiving it.

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§297.210. Approval Criteria for an Application to Convey Treated Marine Seawater in the Bed and Banks.

The commission shall grant an application for a water right to convey treated marine seawater in the bed and banks of a watercourse only if:

(1) the application conforms to the requirements prescribed by §295.305 of this title (relating to Requirements for an Authorization to Convey Treated Marine Seawater in Bed and Banks) and is accompanied by the prescribed fee;

(2) the marine seawater to be conveyed is treated so as to meet standards that are at least as stringent as the water quality standards adopted by the commission and applicable to any receiving stream or impoundment through which the water is proposed to be conveyed;

(3) the treated marine seawater conveyed will only be used by the person to whom the authorization is granted;

(4) the estimate of the amount of treated marine seawater that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses is reasonable and appropriate for the stream in which the treated marine seawater will be conveyed;

(5) the accounting plan submitted required by §295.305(d)(7) of this title has been approved by the executive director; and

(6) the application does not impair existing water rights or vested riparian rights.

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